

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SURFER INTERNET BROADCASTING OF
MISSISSIPPI, LLC

Plaintiff,

v.

XM SATELLITE RADIO, INC. and SIRIUS
SATELLITE RADIO, INC.

Defendants.

08-CV-06357 (RMB)

**AFFIDAVIT OF DAVID FRANCESCANI IN SUPPORT OF MOTION TO ADMIT
J. SCOTT DENKO PRO HAC VICE**

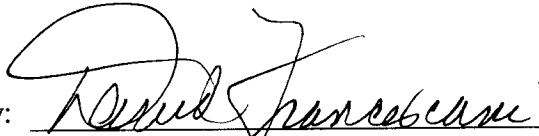
David Francescani, being duly sworn, hereby deposes and says as follows:

1. I am a principal with the law firm of Fish & Richardson P.C., counsel for Defendant XM Satellite Radio, Inc. in the above captioned action. I am familiar with the proceedings in this case.
2. I submit this affidavit in support of J. Scott Denko's motion for admission to practice pro hac vice in the above captioned matter.
3. As shown in the Certificate of Good Standing annexed hereto Mr. Denko is a member in good standing of the Bar of the State of Texas.
4. There are no pending disciplinary proceedings against Mr. Denko in any State or Federal Court.
5. Wherefore it is respectfully requested that the motion to admit J. Scott Denko pro hac vice, to represent Defendant XM Satellite Radio, Inc. in the above captioned matter, be granted.

Respectfully submitted,

Dated: August 7, 2008

FISH & RICHARDSON P.C.

By: 

David Francescatti

SDNY Bar Code : DF 9701

Fish & Richardson P.C.

Citigroup Center – 52nd Floor

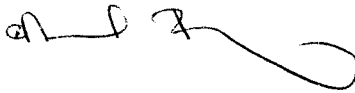
153 East 53rd Street

New York, NY 10022-4611

Telephone : 212-765-5070

Attorneys for XM SATELLITE RADIO, INC.

NEEL RANGARAO
Notary Public, State of New York
No. 07003861702
Qualified to Notarize in New York County
Certificate filed in New York County
Commission Expires October 8, 2010



8/7/08

PROOF OF SERVICE

I am employed in the County of New York. My business address is Fish & Richardson P.C., Citigroup Center, 52nd Floor, 153 East 53rd Street, New York, New York 10022-4611. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On August 7, 2008, I caused a copy of the following document(s):

**AFFIDAVIT OF DAVID FRANCESCANI IN SUPPORT OF MOTION TO ADMIT
J. SCOTT DENKO PRO HAC VICE**

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

J. Kirkham Povall
S. Todd Jeffreys
POVALL & JEFFREYS, P.A.
215 North Pearman Avenue
P.O. Drawer 1199
Cleveland, Mississippi 38732
Telephone: (662) 843-9948
Facsimile: (662) 842-9957

Plaintiff
SURFER INTERNET
BROADCASTING OF MISSISSIPPI,
LLC

Arianna Frankl
Dreier LLP
499 Park Avenue
New York, NY 10022
212-895-2002
Fax: 2128952900

William Monroe Quin, II
The Quinn Firm, PLLC
P.O. Box 16368
Jackson, MS 39236
(601) 957-7811

Nicholas Lazaros Coch
Vito J. DeBari
Kramer, Levin, Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9249
Fax: (212) 715-8000

Defendant

SIRIUS SATELLITE RADIO, INC.


Paul Bowie Watkins, Jr.
Pope S. Mallette
Mayo Mallette, PLLC
P.O. Box 1456
Oxford, MS 38655
(662) 236-0055
Fax: (662) 236-0035

- ☒ **MAIL:** Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.
- ☐ **PERSONAL:** Such envelope was delivered by hand to the offices of the addressee.
- ☐ **FACSIMILE:** Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.

- | | | |
|--------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | ELECTRONIC MAIL: | Such document was transmitted by electronic mail to the addressees' email addresses as stated above. |
| <input type="checkbox"/> | FEDERAL EXPRESS: | Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express. |
| <input type="checkbox"/> | EXPRESS MAIL: | Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service. |
| <input type="checkbox"/> | OVERNIGHT DELIVERY: | Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents. |

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on August 7, 2008, at New York, New York.



Neil B. Ramsaroop

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SURFER INTERNET BROADCASTING OF
MISSISSIPPI, LLC

Plaintiff,

v.

XM SATELLITE RADIO, INC. and SIRIUS
SATELLITE RADIO, INC.

Defendants.

08-CV-06357 (RMB)

**NOTICE OF MOTION AND MOTION FOR ADMISSION
PRO HAC VICE OF J. SCOTT DENKO**

The undersigned counsel hereby moves for the admission *pro hac vice* of J. Scott Denko.

In support of this motion, the undersigned states as follows:

1. I am an attorney with the firm Fish & Richardson P.C., attorneys for the defendant XM Satellite Radio, Inc. ("Defendant") in this matter.
2. I am a member of the Bar of the State of New York and have been admitted to the United States District Court for the Southern District of New York since July 1969.
3. Mr. Denko is a member in good standing of the bar of the Supreme Court of the State of Texas.
4. Mr. Denko's Certificate of Good Standing from the Supreme Court of the State of Texas is attached hereto as Exhibit A.
5. A proposed Order granting this motion is attached hereto as Exhibit B.

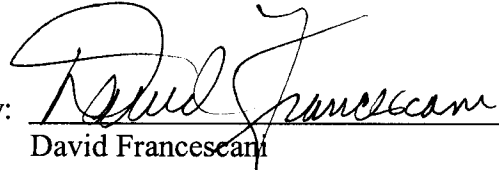
WHEREFORE, the undersigned respectfully requests the admission *pro hac vice* of J. Scott Denko.

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: August 7, 2008

By:

A handwritten signature in dark ink, appearing to read "David Francescani", is written over a horizontal line.

David Francescani

SDNY Bar Code: DF 9701

Fish & Richardson P.C.

Citigroup Center - 52nd Floor

153 East 53rd Street

New York, NY 10022-4611

Telephone: 212-765-5070

Attorney for XM SATELLITE RADIO,
INC.

PROOF OF SERVICE

I am employed in the County of New York. My business address is Fish & Richardson P.C., Citigroup Center, 52nd Floor, 153 East 53rd Street, New York, New York 10022-4611. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On August 7, 2008, I caused a copy of the following document(s):

**NOTICE OF MOTION AND MOTION FOR ADMISSION PRO HAC VICE OF J.
SCOTT DENKO**

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

J. Kirkham Povall
S. Todd Jeffreys
POVALL & JEFFREYS, P.A.
215 North Pearman Avenue
P.O. Drawer 1199
Cleveland, Mississippi 38732
Telephone: (662) 843-9948
Facsimile: (662) 842-9957

Plaintiff
SURFER INTERNET
BROADCASTING OF MISSISSIPPI,
LLC

Arianna Frankl
Dreier LLP
499 Park Avenue
New York, NY 10022
212-895-2002
Fax: 2128952900

William Monroe Quin, II
The Quinn Firm, PLLC
P.O. Box 16368
Jackson, MS 39236
(601) 957-7811

Nicholas Lazaros Coch
Vito J. DeBari
Kramer, Levin, Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9249
Fax: (212) 715-8000

Defendant

SIRIUS SATELLITE RADIO, INC.


Paul Bowie Watkins, Jr.
Pope S. Mallette
Mayo Mallette, PLLC
P.O. Box 1456
Oxford, MS 38655
(662) 236-0055
Fax: (662) 236-0035

- ☒ **MAIL:** Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.
- ☐ **PERSONAL:** Such envelope was delivered by hand to the offices of the addressee.
- ☐ **FACSIMILE:** Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.

- | | | |
|--------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | ELECTRONIC MAIL: | Such document was transmitted by electronic mail to the addressees' email addresses as stated above. |
| <input type="checkbox"/> | FEDERAL EXPRESS: | Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express. |
| <input type="checkbox"/> | EXPRESS MAIL: | Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service. |
| <input type="checkbox"/> | OVERNIGHT DELIVERY: | Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents. |

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on August 7, 2008, at New York, New York.



Neil B. Ramsaroop

Exhibit A

The Supreme Court of Texas

AUSTIN

CLERK'S OFFICE

I, **BLAKE HAWTHORNE**, Clerk of the Supreme Court of Texas, certify that the records of this office show that

J. Scott Denko

was duly admitted and licensed as an attorney and counselor at law by the Supreme Court of Texas on the 5th day of May, 1995.

I further certify that the records of this office show that, as of this date


J. Scott Denko

is presently enrolled with the State Bar of Texas as an active member in good standing.

IN TESTIMONY WHEREOF witness my hand

and the seal of the Supreme Court of
Texas at the City of Austin, this, the
28th day of July, 2008.

BLAKE HAWTHORNE, Clerk

by 
Brad Sonogo, Deputy Clerk

No. 0728P

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Surfer Internet Broadcasting of Plaintiff,
Mississippi, Inc.

8 cv 06357 (rmb)

- against -

XM Satellite Radio, Inc and Sirius Defendant.
Satellite Radio, Inc.

**ORDER FOR ADMISSION
PRO HAC VICE
ON WRITTEN MOTION**

Upon the motion of David Francescani attorney for XM Satellite Radio, Inc.
and said sponsor attorney's affidavit in support;

IT IS HEREBY ORDERED that

Applicant's Name: J. Scott Denko
Firm Name: Fish & Richardson P.C.
Address: 111 Congress Ave #810
City/State/Zip: Austin, TX 78701
Telephone/Fax: (512) 472-5070
Email Address: Denko@fr.com

is admitted to practice pro hac vice as counsel for XM Satellite Radio, Inc. in the above
captioned case in the United States District Court for the Southern District of New York. All attorneys
appearing before this Court are subject to the Local Rules of this Court, including the Rules governing
discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall
immediately apply for an ECF password at nysd.uscourts.gov. Counsel shall forward the pro hac vice
fee to the Clerk of Court.

Dated:
City, State:

United States District/Magistrate Judge